STATE OF MICHIGAN

COURT OF APPEALS

KEVIN J. WOJCIK and SHERYL WOJCIK, Plaintiffs-Appellees,	UNPUBLISHED April 14, 2011
v	No. 295850 Roscommon Circuit Court
PAUL FICAJ and MARGARET FICAJ, Defendants-Appellants.	LC No. 08-727505-CH

Before: O'CONNELL, P.J., and K. F. KELLY and RONAYNE KRAUSE, JJ.

PER CURIAM.

In this dispute between residents of a subdivision bordering Houghton Lake, defendants appeal from a judgment entered in favor of plaintiffs following a bench trial on plaintiffs' claim for declaratory relief. Because we agree that plaintiffs' lots are riparian, we affirm.

I. FACTS AND PROCEDURAL BACKGROUND

This case arises over a dispute between plaintiffs and defendants over who can install hoists and moor boats in the lake in front of plaintiffs' lots. Plaintiffs and defendants own lots in a subdivision bordering Houghton Lake that was originally platted in 1928. Plaintiffs own front-lot property, and defendants own back-lot property. The dedication language reads in part "that the streets, alleys, lagoons, and the beach as shown on said plat are hereby dedicated to the use of the public." According to the plat, there are over 400 lots in the subdivision, approximately 20 of which are separated from the lake by a strip of land designated on the plat as "BEACH." Generally, the beach is approximately 20 feet wide and sandy. However, the beach can vary in size depending on the water levels of the lake, and, in some cases, it can be submerged altogether.

There is no indication in the original plat, or in the lot deeds, which lots have riparian rights. However, the front-lot owners have historically installed docks and hoists in the water directly in front of their property. The back-lot owners, on the other hand, have generally limited their access to the lake through several road ends or the lagoons, if a lagoon borders their property. There was evidence that as early as 1946, no back-lot owners had ever installed a boat hoist or moored their boats in front of a front-lot owner's property without permission.

In June of 2008, plaintiffs visited their lakefront cottage and noticed a boat and a boat hoist in the water directly in front of their property. The hoist and boat belonged to defendants.

Plaintiffs allege that defendants became abusive when plaintiffs spoke with them about removing the boat, which defendants refused to do. The following year, defendants again placed their boat in the water in front of plaintiffs' lots. Defendants also positioned a large bench swing on the beach directly in front of plaintiffs' cottage. Additionally, that same year, another back-lot owner placed a boat and hoist in the water in front of plaintiffs' property, allegedly at the encouragement of defendants.

Plaintiffs then filed an action for declaratory relief seeking a determination of riparian rights. The circuit court found that plaintiffs, as front-lot owners, enjoyed the exclusive riparian right to set up hoists and moor boats in the water in front of their property. However, the court also found that the beach was dedicated for the use of the public and that the general public has the right to access and make use of the beach. The only restriction on the public's use is that members of the public must remove whatever items they brought to the beach when they leave. Defendants argue on appeal that the dedication of the beach for public use vested fee to the property in the county, and thus plaintiffs do not have riparian rights.

II. RIPARIAN RIGHTS

This Court reviews a trial court's findings of fact in a bench trial for clear error and reviews de novo the court's conclusions of law. *Jonkers v Summit Twp*, 278 Mich App 263, 265; 747 NW2d 901 (2008). "A finding is clearly erroneous when, although there is evidence to support it, the reviewing court on the entire record is left with a definite and firm conviction that a mistake has been committed." *Vivian v Roscommon Co Bd of Rd Comm'rs*, 164 Mich App 234, 238-239; 416 NW2d 394 (1987).

Generally, in order to be riparian, land must actually touch the water. *Hilt v Weber*, 252 Mich 198, 218; 233 NW 159 (1930). However, it is well-settled under Michigan law that land that is only separated from the water's edge by a road or right-of-way dedicated for public use under the plat act of 1887 is riparian. See *2000 Baum Family Trust v Babel*, 488 Mich 136, 167; 793 NW2d 633 (2010).

In *McCardel v Smolen*, 71 Mich App 560, 564; 250 NW2d 496 (1976), affirmed in part, vacated in part on other grounds 404 Mich App 89 (1978), this Court determined that land owners whose land was separated from the water's edge by a boulevard, which had been dedicated for use by the public, held riparian rights. The Court noted that the designation of the area as a "boulevard" was important, given the meaning commonly attached to the term when the property was platted. *Id.* at 568. "This was because true boulevards were viewed as parklike areas intended for enjoyment by the general public." *Id.* The beach in this case is analogous with the park, in so much as both beaches and parks generally serve as areas of public recreation and amusement. Applying the reasoning of *McCardel*, the riparian rights in the case at hand belong to the front-lot owners.

In this case, the plat language states "that the streets, alleys, lagoons, and the beach as shown on said plat are hereby dedicated to the use of the public." It appears clear from this language that the intent of the original grantors was to ensure that all lot owners and the general public had access to the water. However, it does not appear that the grantors intended that front lots would be divested of their riparian rights. This is further supported by the fact that the beach

was mainly swamp at the time of the dedication and was not filled in until the area was developed. Accordingly, plaintiffs retain their riparian rights.[1]

Finally, we reject defendants' argument that fee title was passed to the county under the 1887 plat act. 1887 PA 111. The fee that the county receives from a dedication of land under the 1887 plat act is a "base fee." *Babel*, 488 Mich at 163; *Kirchen v Remenga*, 291 Mich 94, 112; 288 NW 334 (1939). Our Supreme Court has explained that a base fee does not convey title in the nature of private ownership; rather, it is a determinable fee because the government holds it only for so long as it is used for a dedicated purpose. *Babel*, 488 Mich at 163-164, 173. As such, a base fee does not give the government any "'beneficial ownership of the land,' [nor does the government] possess 'the usual rights of a proprietor[.]'" *Id.* at 163 (citation omitted). Furthermore, a base fee does not vest riparian rights in the government. *Id.* at 173.

In sum, although the beach was dedicated for public use, plaintiffs maintain riparian rights at the water's edge. As such, plaintiffs have the exclusive right to install hoists and moor watercraft in the water directly in front of their property, and the trial court did not clearly err.

Affirmed.

/s/ Peter D. O'Connell
/s/ Kirsten Frank Kelly
/s/ Amy Ronayne Krause

[1] This is not to say that all land that abuts a park or beach dedicated for public use along a waterfront is riparian. Whether a park or beach dedicated to public use destroys the abutting land owners' riparian rights will depend on the grant language and the circumstances, including the applicable law, that existed at the time of the grant. See *Thies v Howland*, 424 Mich 282, 293; 380 NW2d 463 (1985).